S.B.CIVIL WRIT PETITION NO.4826/1993

Chanan Singh & Anr.
V.
Board of Revenue & Ors.

Date of Order :: 8th March, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Sandhu, for the petitioners.
Mr. K.R.Saran]
Mr. Sajjan Singh] for the respondents.

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This petition for writ is preferred to question validity and propriety of the judgment dated 20.8.1993 passed by Board of Revenue for Rajasthan, Ajmer affirming the judgment dated 20.12.1991 passed by Revenue Appellate Authority, Bikaner camp Sriganganagar.

In brief, facts of the case are that Sub Divisional Officer, Hanumangarh by an order dated 16.4.1987 rejected an application submitted by respondent Surendra Kumar claiming right of way to his agricultural fields. Being aggrieved by order dated 16.4.1987 respondent Surendra Kumar preferred an appeal before Revenue Appellate Authority, Bikaner that came to be accepted by judgment dated 20.12.1991. The Revenue Appellate Authority while accepting the appeal permitted a way 16 ft. wide in chak 6 SNM through stone No.108/282 kila No.1 to 5 and stone No.107/282 kila No.5. The Revenue Appellate Authority on basis of site map held that the applicant was not having any way to approach his fields. The Revenue

Appellate Authority also observed that the respondents in appeal (who are presently petitioners before this Court) also not said anything about availability of alternative way to the applicant Surendra Kumar.

Being aggrieved by judgment dated 20.12.1991 the petitioners preferred an appeal under Section 76 of the Land Revenue Act, 1956 before the Board of Revenue for Rajasthan, Ajmer that too came to be rejected by judgment dated 20.8.1993. The Board of Revenue while rejecting appeal held that the Sub Divisional Officer is competent to provide a way to a tenant in accordance with condition No.8(2) of the Rajasthan Colonisation (General Colony) Conditions, 1955 (hereinafter referred to as "the Conditions of 1955").

While giving challenge to the judgment dated 20.8.1993 passed by Board of Revenue and the judgment dated 20.12.1991 passed by Revenue Appellate Authority, Bikaner, it is contended by learned counsel for the petitioners that chak 6 SNM is not a colony as defined under Section 2(ii) of the Rajasthan Colonisation Act, 1954 (hereinafter referred to as "the Act of 1954"), therefore, conditions No.8(1) and 8(2) of the Conditions of 1955 could not be applied and as such the way permitted to the respondent is beyond jurisdiction of the powers vested with Sub Divisional Officer prescribed under the Conditions of

1955. The counsel for the petitioners to substantiate the contention placed reliance upon a Division Bench judgment of this Court in the case of Prem Singh v. State of Rajasthan, reported in 1990(1) RLW 131. The Division Bench of this Court in the case of Prem Singh (supra) held that when a village is not included in colony area then general conditions of 1955 cannot be applied to that village. It is emphasised by learned counsel for the petitioners that chak 6 SNM is not a colony as defined under Section 2(ii) of the Act of 1954, therefore, the courts below acted beyond jurisdiction while granting permission to respondent Surendra Kumar for a way in chak 6 SNM through stone No.108/282 kila No.1 to 5 and stone No.107/282 kila No.5.

A reply to the writ petition has been filed on behalf of respondent Surendra Kumar stating therein that chak 6 SNM is irrigated by Bhakra Canal and, therefore, the provisions of Rajasthan Colonisation (Bhakra Project Government Land Allotment and Sale) Rules, 1955 (hereinafter referred to as “the Bhakra Project Rules of 1955”) are having application thereon. It is further stated that the Bhakra Project Rules of 1955 are extended to whole of the area irrigated by Bhakra Project Canals consisting of villages listed in the schedule annexed with the Bhakra Project Rules of 1955. The village Beedwala after colonisation chakbandi was effected and named as

chak 6 SNM. The village Beedwala is shown as a colony area in the schedule annexed with the Bhakra Project Rules of 1955, therefore, the same is a colony under the Act of 1954. Learned counsel for respondent Surendra Kumar also pointed out from the revenue records, annexed with reply to the petition for writ, that the land of the petitioner is part of the colony as defined under the Act of 1954. As a matter of fact the land through which right to way is allowed to the respondent was also allotted to the petitioners under the Bhakra Project Rules of 1955. The petitioners have not rebutted these facts.

A reply to the writ petition is also filed on behalf of respondent State of Rajasthan denying that the land of the petitioners is not a part of colony or to say that the chak 6 SNM is not a colony.

Heard the learned counsel for the parties.

Under Section 2(ii) of the Act of 1955 the “colony” means any area having application of the Act of 1954 by notification in official gazette, by order of the State Government or in respect of minor irrigation project by the order of Collector authorised by the State Government in this behalf. The respondent stated in reply to the writ petition that village Beedwala which is having application of the Rules of 1955 being listed in schedule appended with

aforesaid Rules was effected and renamed as chak 6 SNM after chakbandi, therefore, it is a colony as defined under Section 2(ii) of the Act of 1954. This fact is not denied by the petitioners. It is pertinent to note that the fact stated in reply to the writ petition that the land wherefrom permission to have way is granted to respondent Surendra Kumar was allotted to the petitioners under the Rules of 1955 is not denied by the petitioners. A parcha khatauni with regard to the land under tenancy of the petitioner No.2 is also placed on record by the respondents that too shows that the chak 6 SNM is a colony under the Act of 1954. In view of it the law laid down by this Court in the case of Prem Singh (supra) is having no application in present case.

On basis of the facts stated above, it cannot be said that chak 6 SNM is not a colony as defined under the Act of 1954. The argument raised by the petitioners, therefore, is having no merit. No other contention is pressed into service by learned counsel for the petitioners.

The writ petition, therefore, fails and is hereby dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.